

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

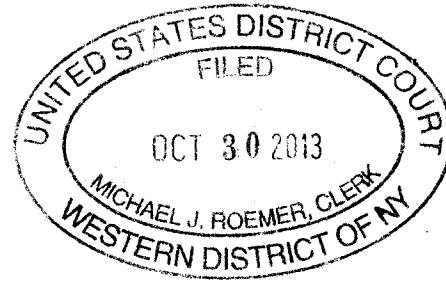
THOMAS DEL GAIZO, et al.,

Plaintiffs,

v.

PROSPECT MORTGAGE, LLC,

Defendant.



ORDER  
13-CV-6200

Currently pending before the Court are plaintiffs' motion to strike defendant's jury trial demand (Docket # 10) and defendant's motion to stay the proceedings (Docket # 16). On October 30, 2013, a hearing was held and arguments were heard from the parties' attorneys. For the reasons set forth on the record during the hearing, it is hereby ORDERED that:

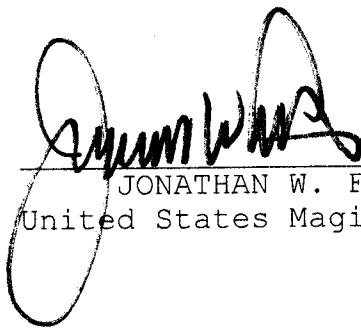
1. Plaintiffs' motion to strike defendant's jury trial demand (Docket # 10) is **granted**. As to defendant's argument that the plaintiffs waived the right to enforce the Jury Waiver Agreement, the Court finds persuasive the reasoning of Judge Gee in Aguilera v. Prospect Mortgage, LLC, No. CV 2:13-05070 DMG (CWx), 2013 WL 4779179, at \*4 (C.D. Cal. Sept. 5, 2013), finding that plaintiffs in the current case "cannot be held responsible for the actions of the Sliger Plaintiffs before they were parties to the litigation." The Court also finds that defendant's argument against enforceability of the waiver is not credible. See Commercial Data Servers, Inc. v. Int'l Bus. Mach. Corp., 262 F. Supp. 2d 50, 58 (S.D.N.Y. 2003) ("It is disingenuous and wasteful

for [CDS] to object that its own documents are not authenticated"); Barker v. Prospect Mortgage, LLC, No. CV-13-00822-PHX-SRB, 2013 WL 5314710, at \*1 n.1 (D. Ariz. Sept. 23, 2013) (same argument made by Prospect Mortgage and rejected because Prospect Mortgage had produced agreements in discovery).

2. Defendant's motion to stay the proceedings (Docket # 16) is **denied in part and granted in part**. The parties may proceed with document discovery. All other discovery is stayed until the resolution of defendant's Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings before the United States Judicial Panel on Multidistrict Litigation ("the JPML motion"), or until further Order of this Court.

3. The parties shall contact the Court to arrange a scheduling conference to occur thirty (30) days after argument of the JPML motion.

**SO ORDERED.**



JONATHAN W. FELDMAN  
United States Magistrate Judge

Dated: October 30, 2013  
Rochester, New York